



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DCW01191  
Section 4.01  
304(m)

JUN 1 1989

OFFICE OF  
WATER

Constance B. Harriman, Atty.  
Steptoe & Johnson  
1330 Connecticut Avenue  
Washington, D.C. 20036-1795

Dear Ms. Harriman:

We are writing in response to your inquiries to the Agency's Office of General Counsel seeking guidance concerning the applicability of EPA's regulations at 40 CFR Part 435, Subpart C (Oil and Gas Extraction Point Source Category, Onshore Subcategory) to coal bed methane production facilities.

Your inquiries relate to a pending action by the State of Alabama, which has proposed but not yet issued a National Pollutant Discharge Elimination System (NPDES) permit for a coal bed methane production facility operated by your client, River Gas Corporation. It is our understanding that the State has not applied 40 CFR Part 435, Subpart C in the proposed permit. The Legal Environmental Assistance Foundation, Inc., an environmental group, has brought suit in the U.S. District Court seeking to enjoin the issuance of the permit on the basis, among other things, that 40 CFR 435.32 "is applicable to and prohibits the discharge of... pollutants" from "facilities engaged in the extraction and production of methane gas..." (Legal Environmental Assistance Foundation, Inc. v. Leigh Peoples, et al., M.D. Ala., No. 89-H-263-N).

As you know, the Agency has advised the State of Alabama in the past that 40 CFR Part 435, Subpart C does not apply to coal bed methane production facilities. The Agency's view is one of long standing. (See EPA's letters of February 23, 1989 to the Alabama Department of Environmental Management and of February 8, 1982 to the Alabama Water Improvement Commission, copies of which are attached.) EPA has not changed its view that 40 CFR Part 435 does not apply to coal bed methane production facilities.

EPA's regulations at 40 CFR Part 435, Subpart C provide that "there shall be no discharge of waste water pollutants into navigable waters from any source associated with production,

- 2 -

field exploration, drilling, well completion, or well treatment;..." 40 CFR 435.32. Those regulations are technology-based guidelines at the BPT (Best Practicable Control Technology Currently Available) level of control. Section 304(b)(1)(B) of the Clean Water Act requires EPA, in establishing BPT guidelines, to consider "the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and... the age of the equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements) and such other factors as the Administrator deems appropriate...."

Nothing in the rulemaking record, including the technical, economic, and environmental assessment support documents, suggests that the Agency considered any of these aspects of methane production from coal beds in developing the oil and gas extraction regulations at 40 CFR Part 435. The existence of a domestic coal bed methane production industry was not known to the Agency during the development of the 1979 regulations for oil and gas extraction. None of the operations associated with exploration, delineation, well drilling, or production of methane from coal beds was visited, sampled, profiled, or otherwise considered during the development of the oil and gas extraction regulations. Because EPA did not study or consider the coal bed methane production industry in the development of the regulations, the Agency made no findings with respect to the production methods employed, materials used, volumes, types and characteristics of wastes generated, pollutants of concern, pollution mitigation measures, or practicable treatment technologies.

In addition, the costs of compliance with the BPT "zero discharge" requirement to the coal bed methane production industry were unknown to EPA at the time of promulgation of the Part 435 regulations. Therefore, the Agency did not determine whether "zero discharge" is appropriate for coal bed methane production operations in light of the BPT statutory mandate that the total cost of the application of the treatment technology be considered in relation to effluent reduction benefits.

Finally, the Development Document for the Part 435 regulations (Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Oil and Gas Extraction Point Source Category, EPA 440/1-76/005-a, September 1976), makes clear that only "certain segments of the petroleum industry" were covered by the study. Development Document, Section III pp. 8-9. This would include natural gas production associated with petroleum deposits, but not methane gas production from coal deposits.

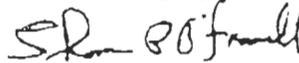
- 3 -

The fact that the Part 435 regulations do not apply to coal bed methane facilities does not mean that these facilities are exempt from appropriately stringent regulation. Prior to the promulgation of nationally applicable industry-wide effluent limitations guidelines, such limitations are to be applied in individual permits on a case-by-case, best professional judgment ("BPJ") basis. Section 402(a)(1) of the Clean Water Act; NRDC v. EPA, 859 F.2d 156, 197-202 (D.C. Cir. 1988); American Petroleum Institute v. EPA, 787 F.2d 965, 969, 971 (5th Cir. 1986). This requirement is applicable to both EPA-issued and state-issued permits. 40 CFR 122.44(a); 125.3(c)(2). The bases for the technology-based effluent limitations and standards and the deadlines that Congress set for their achievement are set forth in Sections 301(b), 304(b) and 306(b) of the Clean Water Act.

We would like to point out in closing that as the permitting authority in this case, the State of Alabama may determine in the first instance whether or not the regulations in issue must be applied. Accordingly, this letter constitutes advice by the Agency that it reads the Part 435 regulations as being inapplicable to coal bed methane production facilities, not a formal Agency determination that is mandatory at this intermediate stage of the permitting process. EPA's role in the review of NPDES permitting by delegated states is set forth at 40 CFR Part 123, Subpart C.

I hope this letter fully addresses your concerns. If we can be of further assistance, please do not hesitate to contact Marvin Rubin, Chief, Chemicals Industry Branch at 202-382-7124.

Very truly yours,



Thomas P. O'Farrell  
Director  
Industrial Technology  
Division

cc: Fournier J. Gale, III, Esq.  
Olivia H. Jenkins (ADEM)  
David A. Ludder, Esq. (LEAF)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 08 1982

Mr. Rodney D. Hames  
Water Improvement Commission of the State of Alabama  
Public Health Services Building  
Montgomery, Alabama 36130

Dear Mr. Hames:

I received your letter dated January 19, 1982 regarding the applicability of 40 CFR Part 435 to wastewater from coal bed degasification facilities. As discussed during our earlier telephone conversation, the U. S. Environmental Protection Agency did not consider wastewater from such operations in the development of effluent guidelines for the Oil and Gas Extraction Point Source Category; therefore, 40 CFR Part 435 is not directly applicable to the coal bed degasification facilities.

I hope this is responsive to your request. If you have any questions, please call me at (202) 426-4617.

Sincerely,

John Lum, Project Officer  
Effluent Guidelines Division

cc: William Jordan (OWE)

FEB 11 1982  
STATE OF ALABAMA  
WATER IMPROVEMENT  
COMMISSION

# WATER IMPROVEMENT COMMISSION

ITO L. MYERS, M.D.  
Chairman, State Health Officer

John MADDISON, JR.  
Vice Chairman  
Commissioner, Department of  
Conservation and Natural Resources

Office Location:  
2721 Gunter Park Dr., West  
Montgomery, Alabama



James W. Warr  
Director

Commission Members:  
Terry A. Braxton, Sr., Palm Bay  
Charles O. Carlin, Maryland  
Frank E. Lindstrom, Sr., Birmingham  
David L. Thomas, Montgomery  
Dr. John M. Winston, Jr., Montgomery

Mailing Address:  
Public Health Services Div.  
Montgomery, AL 36130  
Telephone 205/273-3620

January 19, 1982

Mr. John Lum  
WH 552  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

Dear Mr. Lum:

During the development of a general NPDES permits program for the State of Alabama, a difficulty was encountered with respect to a particular general permit category and possible governing effluent limitation guidelines. The general permit category is the Coal Bed Degasification Category and the effluent limitation guideline is for 40 CFR Part 435 Oil and Gas Extraction Point Source Category Subpart C - Onshore Subcategory.

Briefly, coal bed degasification is a process in which a well is drilled into a coal seam and then pressurized causing the seam to fracture. This fracturing liberates trapped methane and other gases. At first this process was employed as a safety measure intended as a method to lower the gas content of the coal seam prior to mining operations thereby lowering human health hazard and explosion risks. Following the oil embargo of 1974 and subsequent energy crisis in this country, the feasibility of collecting and selling this gas was investigated. At first the price of gas precluded the development of the technology on an economic basis. Recent price increases and deregulation of the natural gas industry, however, has now made the collection and sale of this gas an attractive venture. The extensive coal reserves of this state target it as a prime location for the development of this industry. Due to the unusual nature of this industry, the issuance of individual NPDES permits would place an unmanageable burden on this agency. Therefore, a general permit seems to be the most desirable route to take.

During the development of the general permit, 40 CFR 435.30 - 435.32 were reviewed. In short, these sections require zero discharge from "facilities engaged in the production, field exploration, drilling, well completion, and well treatment in the oil and gas extraction industry . . ." Inasmuch as the coal bed degasification industry is a gas extraction industry, this office referred to the Development Document for 40 CFR 435 to determine whether these guidelines are applicable. From the review of this document (EPA 440/1-76/055-a Group II), the following conclusions were derived:

January 19, 1982

Page 2

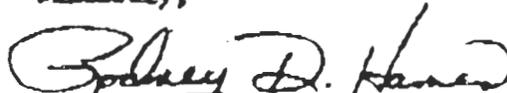
1. The agency did not study a coal bed degasification area during the development of these guidelines;
2. Nor was the feasibility of zero discharge from such a facility considered;
3. Also, the specialized processes and the source and nature of the wastewater was not considered.

In view of these conclusions, this office is of the opinion that 40 CFR §635 is not applicable to the coal bed degasification industry and, therefore, the zero discharge mandate under 40 CFR §435.32 is not binding to these facilities.

In this regard and in accordance with this agency's Memorandum of Agreement with EPA regarding the NPDES program, we request a written statement of concurrence or denial with respect to our aforementioned opinion. If such statement is not received within 21 days of the date of this letter, this office will assume concurrence with our opinion and proceed with permit development.

As always, we are appreciative of any and all assistance that you can give us. Should you have any questions, please contact the undersigned at 205-277-3630.

Sincerely,



Rodney D. Hines  
Engineer, Technical Staff  
Water Improvement Commission

RDH:dac